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November 14, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby
Counter TW-A325
Washington, D.C. 20554

Re: Review of the Commission's Rules and Policies Affecting the
Conversion to Digital Television, MM Docket No. 00-39

Ex Parte Communication

Dear Ms. Salas:

The Association for Maximum Service Television, Inc. ("MSTV") submits this letter to supplement the record with respect to the Commission's authority to mandate DTV receiver performance thresholds – in particular, to impose DTV receiver minimum performance levels – and to require that analog television receivers include tuners for reception of over-the-air DTV signals. Recent Commission statements suggest that the FCC plans to await a congressional directive to impose DTV receiver requirements. MSTV believes that the Communications Act already authorizes the Commission to take such action.

In a recent speech, Chairman Kennard stated that Congress should direct the Commission to require that all new television sets manufactured after a given date include the capability to receive DTV signals.¹ Also, in a recent letter to Congressman W.J. "Billy" Tauzin, Dale

¹ William E. Kennard, FCC Chairman, Speech, "What Does \$70 Billion Buy You Anyway?" *Rethinking Public Interest Requirements at the Dawn of the Digital Age*, presented at Museum of Television and Radio, New York, New York (Oct. 10, 2000), available at <<http://www.fcc.gov/Speeches/Kennard/2000/spwek023.html>>.

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Hatfield, Chief of the FCC's Office of Engineering and Technology, recommended a number of steps that Congress should take to expedite the DTV transition. Among other things, Mr. Hatfield recommended that Congress "[c]larify that the Commission has specific authority to adopt a requirement that new television receivers above a certain screen size, *e.g.*, 13 inches, include the capability to receive DTV signals" and provide the Commission specific authority to "establish technical performance standards for DTV receiving equipment."² MSTV agrees that establishing DTV performance thresholds and mandating DTV tuners are crucially important to the success of the DTV transition. We believe, however, that statutory authority currently exists for the Commission to promulgate such requirements.

The FCC Has Authority To Establish DTV Performance Thresholds

As MSTV described in its comments and reply comments in this DTV Biennial Review Proceeding, the All Channel Receiver Act ("ACRA"), 47 U.S.C. § 303(s), provides the Commission with authority to establish performance thresholds³ for DTV receivers. ACRA authorizes the Commission to require that all television receivers shipped in interstate commerce or imported from any foreign country for sale to the public "be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting."⁴ The statutory language does not limit the frequencies to which it applies. It applies to *all* frequencies, whether they are UHF or VHF frequencies and whether they carry analog or digital signals. Moreover, ACRA requires *adequate* reception. It gives the Commission authority to ensure meaningful and effective reception.⁵ Congress specifically empowered the Commission to require adequate reception to protect consumers from "television sets having the barest capability of receiving

² Letter from Dale N. Hatfield, Chief, Office of Engineering and Technology, FCC, to the Honorable W.J. "Billy" Tauzin (Sept. 1, 2000).

³ The coverage and interference figures in the DTV Table assume that receivers are performing at certain minimal levels with respect to receiver noise figures, carrier-to-noise ratios, and adjacent channel/taboo channel D/U ratios. Performance thresholds should ensure that receivers perform up to the interference levels assumed in the DTV table. Because receivers have had difficulty acquiring signals in multipath-rich environments and other challenging RF conditions, they also should be able to perform up to industry-recommended performance thresholds under real-world multipath conditions.

⁴ 47 U.S.C. § 303(s).

⁵ See MSTV Reply Comments, MM Docket No. 00-39 at 6-7 (discussing legislative history of ACRA).

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signals which therefore could not permit satisfactory and usable reception of such signals in a great many instances.”⁶

Pursuant to ACRA, the Commission promulgated performance thresholds so that UHF reception would not be inferior to VHF reception. Now, the Commission should use that authority to promulgate standards to ensure adequate reception of new DTV signals.⁷ Once again, consumers deserve such protection. Notwithstanding Mr. Hatfield’s recommendation that Congress provide the Commission with “specific authority” to “establish technical performance standards,” ACRA squarely grants the Commission that authority. The Commission should not hesitate to exercise its authority to promulgate performance thresholds to instill consumer confidence and facilitate the DTV transition.

The Commission also has specific statutory authority in 47 U.S.C. § 302a(a) to set RF interference performance thresholds. That provision empowers the Commission to establish “minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy.” Congress gave the Commission this authority in 1982 because it found that manufacturers were not voluntarily incorporating interference cures.⁸ This was true even though there was a vibrant market for the equipment in question; market forces simply were not engendering better receivers. Now, during the DTV transition, particularly in the absence of a vibrant consumer electronics DTV equipment market, the Commission needs to require that DTV receivers protect against interference. The Commission should exercise its statutory authority under 47 U.S.C. § 302a(a) by establishing receiver performance thresholds for rejection of adjacent channel/taboo channel RF interference.

The Commission Has the Authority to Require Dual-Mode Receivers

Both Chairman Kennard and Mr. Hatfield also ask Congress to clarify the Commission’s authority to require that new television sets include the ability to receive over-the-air DTV signals. MSTV agrees that the DTV transition will falter, and ultimately may fail, if DTV sets are not able to tune in over-the-air signals. Currently, the majority of DTV sets available to consumers will not receive over-the-air signals; they can only display digital signals received from cable or DVD players. However, the Commission itself has recognized that “consumers have the expectation that television sets they purchase to work with cable systems will also

⁶ S. Rep. No. 1526, 87th Cong., 2d Sess. at 8 (May 24, 1962), *reprinted in* 1962 U.S.C.C.A.N. 1873, 1880.

⁷ MSTV is not asking the Commission in this instance to choose a DTV transmission technology. Rather, it asks that the Commission establish performance thresholds so that receivers display good pictures whichever technology is used.

⁸ See MSTV Reply Comments at 7-8 (discussing legislative history of 47 U.S.C. § 302a).

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receive over-the-air broadcast signals.”⁹ The Commission already has the necessary authority to ensure that these consumer expectations are satisfied.

ACRA provides the Commission with authority to require that all sets that tune in any over-the-air signal (*i.e.*, analog signal) tune in all over-the-air signals (*i.e.*, digital). When Congress enacted ACRA in 1962 to ensure that there would be an audience able to receive UHF broadcasts, it was addressing the problem that very few television sets were capable of receiving UHF signals.¹⁰ The remedy was to give the Commission authority to require that capability. Of course, the statute went further to require adequate reception, but the threshold authority was for the Commission to be able to require that all television sets be capable of receiving all channels.

What Congress and the Commission accomplished with ACRA – requiring receiver capability to tune in established VHS stations as well as developing UHF stations – would analogously be accomplished today by requiring a dual-mode receiver capable of tuning in established analog stations as well as newer DTV stations. Despite Commission hopes, the marketplace has not produced widely available dual-mode receivers. Furthermore, dire predictions about the consequences of a dual-mode receiver requirement may be unfounded. In the 1960s, the average price for a black-and-white receiver actually declined as ACRA was implemented, despite pre-ACRA predictions that a VHF/UHF receiver would cost substantially more. Moreover, the number of UHF stations increased dramatically. What worked in 1962 can work again, if only the Commission would apply the statutory authority that exists.¹¹

⁹ Report and Order, *In re Compatibility Between Cable Systems And Consumer Electronics Equipment*, PP Docket No. 00-67 at ¶ 27 (rel. Sept. 15, 2000); *see id.*, Separate Statement of Commissioner Susan Ness (“In my opinion, a digital television receiver that carries a label blessed by the Federal Communications Commission should be able to receive an over-the-air digital signal.”).

¹⁰ *See* S. Rep. No. 1526 at 3, *reprinted in* 1962 U.S.C.C.A.N. 1875 (“Of the approximately 55 million television receivers presently in the hands of the public, only 9 million (or about 16 percent) can receive UHF signals.”).

¹¹ Further authority for a DTV tuner requirement rests in 47 U.S.C. § 336, added to the Communications Act of 1934 by the Telecommunications Act of 1996. With § 336, Congress empowered the Commission to prescribe regulations necessary to effectuate its assignment of DTV stations. *See* 47 U.S.C. § 336(a), (b). Subsection 336(a) authorizes the Commission to assign DTV licenses to incumbent broadcasters and regulate so as to effectuate the DTV transition. Subsection 336(b) provides the Commission with broad authority to promulgate rules necessary for the DTV transition and related rules to protect the public interest. Section 336 gave rise to, *inter alia*, the Commission’s *DTV Fifth Report & Order*, which promulgated rules “to promote and preserve free, universally available, local broadcast television in a digital world.” Fifth Report and Order, *In re Advanced Television Systems and Their Impact upon the* (continued...)

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Without a requirement that all DTV receivers be capable of adequate over-the-air reception of DTV signals, the DTV transition will fail. ACRA first broke the stalemate that impeded utilization of UHF signals. Now, it is time for the Commission to use its authority to keep the DTV transition proceeding apace.

Sincerely yours,



Jonathan D. Blake
Ellen P. Goodman

*Attorney for Association for
Maximum Service Television,
Inc.*

cc:

Chairman Kennard
Commissioner Furchtgott-Roth
Commissioner Ness
Commissioner Powell
Commissioner Tristani
Dale Hatfield
Bruce Franca
Susan Fox

Existing Television Broadcast Service, MM Docket No. 87-268, 12 FCC Rcd. 12809, at ¶ 5 (1997). Whether the Commission fulfilled this goal is at issue in this *DTV Biennial Review*. If it is found that more could be done to “strengthen, not hamper, the possibilities for broadcast DTV’s success,” *id.* at ¶ 4, then § 336 empowers the Commission to regulate to that end.